IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Civil Writ Petition No.1560 of 2007

Ms.Beatrice M. Clifford & ors. Petitioners

Vs.

Nevelle Navroj Italia & ors. Respondents

Mr.N.V.Walawalkar, Sr.Counsel i/b. M/s. David & Associates for petitioners.

Mr.P.K.Dhakephalkar, Sr.Counsel i/b. Mr.Girish Godbole for resp.nos.2b and 3.

CORAM: B.H.MARLAPALLE, J.

April 13, 2007.

P.C.

. This petition filed under Article 227 of the Constitution arises from an interlocutory order passed on 18/1/2007 below Exhibit 12 filed in Appeal No.52 of 2005 by the Appellate Bench of the Small Causes Court at Bombay.

. During the pendency of the said appeal filed by the petitioners against the dismissal order in RAE & R Suit No.1052/3201 of 1986, the application at

Exhibit 12 was filed for appointment of Court Receiver and on the ground that the suit property was likely to be damaged, encumbered or otherwise occupied by any alien and more particularly the person who was appointed as the Constituted Attorney by the tenant Mrs. Mehru Navrozitalia on 19th August 2004. It was contended that the said C.A. came to the knowledge of the petitioners and they apprehend that the C.A. may occupy the suit premises in the absence of the tenants. It was further contended that in the mean while the tenants had obtained permanent citizenship of Canada. Reference was more particularly made to the following two clauses i.e.

Clause no.8 and clause no.9 of the C.A.

> "8. To reside either himself alone or with his family member or allow any other person to reside alone or with any other persons jointly on my behalf or on his behalf or his agents in the said premises and to take care during my absence in India.
>
> 9. To substitute and appoint from time to time one or more attorney or attorneys under my said attorney with the same or limited

powers and such substitute or substitutes at pleasure to remove and another or others to appoint, in respect of the said premises."

. In the impugned order the lower Appellate Court referred to Clause no.8 and observed as under :

"The recital of the said clause will have to be appreciated in its proper perspective. Bare reading of the said clause shows that the C.A. has been conferred with power to induct or allow any other person to reside alone in the suit premises. Therefore, these particular words are sufficient to conceive the fact that there is likelihood of creating third party interest over the suit premises is concerned. The Appellate Court has power to grant such order as observed in State of Maharashtra V. Admani reported in AIR 1995 Supreme Court page 350 to freeze the present position relating to the possession over the suit premises sans there being any prayer in the application."

. In fact reading of the clause no.8 by the

Appellate Court does not appear to be complete in asmuchas the said clause even otherwise empowers the CA to reside either himself alone or with his family members and, therefore, the landlords apprehend that even the CA may himself come and occupy the premises alone or with his family members or create any third party interest and, therefore, there was necessity to appoint the Court Receiver.

. The appeal filed by the landlords has been pending for more than two years and it would be, therefore, appropriate that the same is decided on its own merits as expeditiously as possible but within a fixed period and in the meanwhile the landlords should be protected so as to erase their apprehension during the pendency of the appeal.

. Hence it is directed that Appeal No.52 of 2005 be heard and decided on its own merits as expeditiously as possible and preferably by 31st July 2007. Clause Nos.8 and 9 of the C.A. shall not be invoked or acted upon by the C.A. till the said appeal is heard and decided and two weeks thereafter. Mr. Nayak who is visiting the suit premises temporarily will continue to do so and such visits as

of now to attend the gardening, maintenance or to check the regular upkeeps of the premises shall not, in any way, be construed as occupying the premises.

. Petition is disposed off accordingly.

(B.H.MARL